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to the

**House Committee on International Relations
Subject: “The U.S.-India ‘Global Partnership’: Legislative Options”**

May 11, 2006

Good morning, Mr. Chairman, and Members of the Committee. Thank you for your invitation to testify on the legislative options associated with the President's proposal for civil nuclear cooperation with India. I am strongly of the belief that the President's legislative proposal on this subject—both on process and on substance—is a good one. I recognize that there are many who hold an opposing view, contending that civilian nuclear cooperation with India should not occur under any circumstances short of New Delhi signing the Non-Proliferation Treaty (NPT) as a non-nuclear weapon state. I have great respect for this opinion because the arguments advanced by its protagonists are weighty and serious, but on balance I disagree with it—for the geopolitical, energy, and nonproliferation reasons I have elaborated elsewhere.* And, finally, there is a third perspective: those who believe that the U.S.-Indian agreement on civilian nuclear cooperation ought to be supported, but after improvement through legislative amendments. I appreciate the sentiments underlying this position, but have yet to be convinced that such a course of action can be successfully pursued without grave risk to the accord itself.

In Niccolo Machiavelli's great book, *The Prince*, Machiavelli makes the important distinction between imagined republics, "that have never been seen or known to exist in truth," and real republics which, despite being base, messy, and invariably compromised, remain the only world we actually have. Confronted by these alternatives, Machiavelli taught that all political practice that seeks to be successful ought to take its bearings from how things effectively are, rather than from some idealized impressions of what they ought to be. I would urge Congress to apply Machiavelli's teaching when thinking about how to improve the current U.S.-Indian civil nuclear agreement: it is no doubt easy to envision a series of imaginary U.S.-Indian accords on civil nuclear cooperation, all of which are undoubtedly superior to the one and only agreement that currently exists between the two countries. All these imaginary agreements would improve upon the current understanding in an infinite variety of ways—with thoughtful Americans and thoughtful Indians each proposing different amendments to the compact that now presently exists. There is no dearth of commentary both in the United States and in India on how the existing Bush-Singh agreement might be further improved to the benefit of one or the other side. There is only one problem, however, with all these imagined agreements: they do not exist—and any effort to beget them, through a radical modification of that which exists already, would have exactly the effect of killing the only agreement possible between the two countries.

* My previous reflections on different aspects of the U.S.-Indian nuclear cooperation initiative can be found in Ashley J. Tellis, "South Asian Seesaw: A New U.S. Policy on the Subcontinent," Policy Brief, 38 (Washington, D.C.: Carnegie Endowment for International Peace, May 2005); Ashley J. Tellis, *India as a New Global Power: An Action Agenda for the United States* (Washington, D.C.: Carnegie Endowment for International Peace, June 2005); Ashley J. Tellis, Testimony to the House Committee on International Relations, Subcommittee on Asia and the Pacific, on "The United States and South Asia," June 14, 2005; Ashley J. Tellis, "Should the US Sell Nuclear Technology to India? – Part II," YaleGlobal Online, November 10, 2005; Ashley J. Tellis, Prepared Testimony to the House Committee on International Relations on "The U.S.-India 'Global Partnership': How Significant for American Interests?" November 16, 2005 and, Ashley J. Tellis, Prepared Testimony to the Senate Foreign Relations Committee on "U.S.-India Atomic Energy Cooperation: Strategic and Nonproliferation Implications," April 26, 2006.

The agreement on civil nuclear cooperation that presently exists between the United States and India was the only accord possible because it remains the only framework that protects the core national security interests of both sides. To be sure, both the Administration and the Singh government would have each preferred a different kind of understanding—one that advanced its own interests a little more at the expense of the other's. Such an agreement, however, lay outside the capacity of both parties to consummate—and for good reason: any agreement that undermines the vital national interests held by the other will always remain a species of Machiavelli's "imagined" politics, one that is pleasant to contemplate, good to yearn for, but forever beyond reach. The agreement on civil nuclear cooperation concluded by President George W. Bush and Prime Minister Manmohan Singh is probably the "worst" possible agreement that could be secured in comparison to all the other imaginary compacts that could be imagined, but it is the only one that materialized precisely because its various compromises enabled both the United States and India to protect their principal national interests in a conciliatory way: It advances the American strategic objectives of cementing a new and transformed relationship with a large rising power in the international system, India, while concurrently strengthening the global non-proliferation regime by requiring India to institutionalize stringent export controls, bring its civilian nuclear reactors under international safeguards, and assist the United States in preventing further proliferation; simultaneously, it advances the fundamental Indian objective of securing access to nuclear fuel, technology, and knowledge required to expand its nuclear power program, even as it preserves New Delhi's right to produce those nuclear weapons judged to be essential for Indian security in the face of threats emanating from a rising China and a revanchist Pakistan. Since no other agreement, including the many imaginary versions now being contemplated, could protect these vital interests of the two countries in exactly this way, it is not surprising that the understanding finally reached between the two sides was exactly the one that now lies before the Congress for legislative endorsement.

None of what I have said thus far is meant to impugn in any way Congress' prerogative to amend the President's legislative proposal as it sees fit. It is intended, however, to suggest the following propositions for Congressional consideration:

To begin with, and despite what may be appearances to the contrary, the current Administration proposal on civilian nuclear cooperation with India is the best agreement that could be realized in the real world—given the competing pressures both in the United States and in India—as opposed to some imagined alternative.

Further, if the Administration's strategic goals in reaching this agreement are accepted as worthwhile by the Congress—irrevocably removing all past structural obstacles to the transformation of the U.S.-Indian relationship; assisting India's energy needs in an environmentally sensitive way as part of a larger vision of increasing Indian power in support of U.S. geopolitical goals in Asia and beyond; and, strengthening the global non-proliferation regime by improving Indian export controls and encouraging India to take on regime obligation that go beyond those ordinarily accepted by NPT signatories—then, there is very little that the current agreement would need by way of Congressional improvement.

And, finally, any legislative “improvements” to the current proposal that have the effect of killing the civilian nuclear agreement with India would do grave, perhaps lasting, damage to the ongoing transformation in U.S.-Indian relations, U.S. regional policy in South Asia, and U.S. efforts to successfully manage a resurgent Asia. As such, they ought to be carefully considered for their immediate and remote consequences.

Consistent with these considerations, let me suggest three principles that might be of help to the Congress as it considers its options in regards to the President’s legislative request.

First, the U.S.-India civil nuclear agreement, as it currently stands, encodes a very delicate balance between benefits and obligations on both sides—Congress ought not to entertain any amendments that disrupt this balance and in the process destroy the deal.

- As a practical matter, this implies that Congress should not support any amendments that have the effect of increasing any U.S. or Indian burdens in a manner inconsistent with the original deal. Specifically, Congress ought to eschew the temptation of introducing demands that would require the Administration to re-negotiate the agreement with India. Any amendments that have this consequence—whether intended or not by their protagonists—would have the effect of killing the civil nuclear agreement and, by implication, destroying the growing transformation of U.S.-Indian relations, which remains in the view of many observers the President’s greatest foreign policy achievement thus far and one that enjoys bipartisan support in the Congress. In this connection, Congress should particularly resist the temptation to trying to shape India’s foreign policy choices through legislative conditionality. There are some areas where India’s foreign policy priorities are not entirely congruent with those of the United States. This is not a situation unique to India; rather, it describes circumstances common in international politics. India’s ties to Iran are a good example in this regard, where New Delhi’s relationship with Tehran is closer to Rome’s or to Tokyo’s than to Washington’s. I understand the sentiment in Congress to attach amendments to the President’s legislation, which would push Indo-Iranian relations in a different direction: I hope Congress will desist from pursuing such a course, not because I necessarily disagree with this goal but because I think legislative conditionality is a blunt instrument that could end up subverting its intended objectives. There are some goals that are best pursued through quiet diplomacy, perhaps supplemented by a “sense of Congress” resolution, rather than through formal and exacting legislative mandates: shaping India’s relations with Iran is one such goal.

Second, the U.S.-India civil nuclear agreement is about enhancing India’s energy security and strengthening the global non-proliferation regime by giving India access to nuclear fuel, technology, and knowledge in exchange for New Delhi formally becoming part of the international coalition to defeat the further proliferation of weapons of mass destruction—Congress should eschew the temptation to transform this accord into a device that is aimed at limiting India’s nuclear weapons program.

- As a practical matter, this implies that Congress should not support any amendments that are intended to limit, or have as their effect a limitation on, India's capacity to produce fissile materials for its nuclear weapons program. Irrespective of how desirable such a condition may be to some in the United States, the Government of India has formally taken the position that so long as China continues to produce nuclear weapons and delivery systems (including many aimed at India); Beijing continues to support Islamabad's nuclear and missile programs; and Pakistan continues to produce fissile materials and nuclear weapons, India cannot adhere to any unilateral nuclear materials production moratorium without seriously undermining its own national security. Accordingly, any effort to stipulate that an Indian fissile materials production moratorium would be a precondition for implementing the deal in effect functions as a "poison pill" that would sunder the accord. In a similar vein, Congress should avoid the temptation of introducing any conditions that require India to eschew a resumption of nuclear testing under any circumstances in perpetuity. The Government of India is fully aware of what a resumption of nuclear testing would precipitate under current U.S. law; the Government of India has also reaffirmed its current unilateral moratorium on nuclear testing in the July 18, 2005, Joint Statement. Both these facts provide a delicate, but adequate, assurance of continued Indian restraint so long as *force majeure* circumstances do not intervene. Since this is a highly volatile and contentious matter in Indian domestic politics, not to mention one that implicates Indian sovereignty and perhaps even its security over time, Congress should make no effort to extract stronger Indian commitments on the issue of nuclear testing than those already provided by New Delhi. Any attempts to the contrary would certainly kill the current agreement.

Third, the U.S.-India civil nuclear agreement is fundamentally about transforming the relationship between the two countries and deepening India's integration with key international institutions, such as the Nuclear Suppliers Group (NSG) and the International Atomic Energy Agency (IAEA), which are central to strengthening a peaceful international order—Congress, accordingly, should reject any amendments that target or impose burdens on either Indian or U.S. relations with third countries insofar as these pertain to the implementation of the understanding on civilian nuclear cooperation.

- As a practical matter, this implies that Congress should move expeditiously to amend Section 123 of the Atomic Energy Act as requested by the President. Such an action would provide the Nuclear Suppliers Group with every incentive to make an early formal decision about treating India as an exception to its current Guidelines, an action that would have the effect of creating a level playing field for U.S. industry seeking to enter the Indian nuclear energy market. It would also induce the Government of India to conclude as quickly as possible a safeguards agreement with the IAEA and a nuclear cooperation agreement with the United States—the fruits of these agreements obviously cannot be enjoyed until the former is ratified by the Board of Governors of the IAEA and the latter by the Congress—both of which are moving slowly in part because of Indian fears about

Congress' reluctance to complete the appropriate legislative action. Finally, it would provide other nuclear suppliers, most of which are friends or allies of the United States, with a template that they might use to configure their own nuclear cooperation agreements with India in support of the common goal of integrating New Delhi into the global non-proliferation system, while simultaneously permitting them to incorporate whatever clauses their own specific national interests might require. Since the goal of integrating India into the global nonproliferation system must be undertaken in an orderly way for the sake of the system as a whole, we should be mindful of the fact that nuclear cooperation agreements between India and other third parties may differ from one another in various ways. In this context, Congress should refrain from the temptation of trying to regulate these third party agreements because any amendments directed towards this end would end up not only being difficult to implement but also erode trust between the United States and its international partners.

If these three principles are adhered to scrupulously, as I believe they must be if we are to avoid gutting U.S.-Indian civilian nuclear cooperation, it will become obvious that there is not much Congress can do to substantively "improve" the content of this important initiative. This fact should not be a reason for legislative angst; rather, it should be viewed as a reflection of the complexity surrounding the civil nuclear understanding with India, and the difficult pressures that both the President and Prime Minister Singh have had to juggle with as they worked out the details of this path-breaking effort. If Congress, in my opinion therefore, ought not to attempt improving the substantive content of this understanding directly, there are important contributions that it can still make to ensuring that the U.S.-Indian civil nuclear agreement advances American interests both with respect to India and in regards to the larger international order. Let me identify five areas where Congressional initiatives, not necessarily though through legislative conditions, may be particularly helpful.

- (1) Congress should enjoin the Administration to encourage India to broaden its participation in regards to strengthening the global non-proliferation order, primarily through Indian membership in the Proliferation Security Initiative, the Australia Group, and the Wassenaar Arrangement. As Secretary Rice testified before this committee, the Administration has already pressed India strongly on these issues. It is possible, perhaps likely, that by the time Congress acts on the President's legislative proposal, these matters will be happily resolved with India announcing its commitment or membership as appropriate. If this does not occur, however, a Congressional prod in this direction—by legislative conditionality, if necessary—would be entirely appropriate.
- (2) The successful implementation of the U.S.-India civil nuclear agreement would assure India's integration into global nuclear order. Yet, the future of this order is itself uncertain as new technologies relating to weapons of mass destruction spread throughout the globe, both to new non-state actors and to existing states. Given this fact, Congress could enjoin the Administration to engage in a regular dialogue with India on the future of the global nuclear

order in the hope that both sides could reconcile their objectives and strategies as they jointly work towards achieving the goals set out by the NPT for all states in different ways.

- (3) Congress should urge the Administration to engage India in a focused dialogue on reforming the management of its nuclear estate, primarily with the aim of opening its nuclear power production infrastructure to foreign and domestic private investment. Implementing this objective entails a wide variety of actions ranging from amending the Indian Atomic Energy Act to allow private investment, to creating new regulations that oversee all the activities of the new private entrants. While the Government of India has indicated its interest in exploring how its nuclear power sector might be opened to private participation, a fillip to this effort through a dialogue involving government officials, the nuclear industry, and other private stakeholders could benefit the interests of both countries as India moves towards a large-scale expansion of nuclear energy.
- (4) Associated with the third idea but distinct from it, is the need for India to develop a legal, regulatory, and financial regime for managing catastrophic risks, a contingency that must be anticipated in the context of expanding nuclear power production in India and the growth of India as an industrial power more generally. While U.S. industry has floated many ideas on how India could address nuclear liability issues, what is important is that India develops a comprehensive nuclear liability regime if for no other reason than to afford protection for U.S. nuclear suppliers who might otherwise be placed at a competitive disadvantage relative to others. Congress should urge the Administration to begin discussions with India on this issue.
- (5) Finally, Congress should encourage the Administration to conduct an ongoing discussion with India, either through the IAEA or bilaterally, on enhancing both the security and the safety of its nuclear installations. In this regard, I must emphasize that the Government of India accords highest priority to protecting its strategic, including nuclear power generation, facilities against both external and insider threats through a combination of technical and procedural means. Successive IAEA and NRC delegations visiting India have also had occasion to comment favorably on the Indian efforts in regards to ensuring safe operation of its nuclear facilities. A Congressionally mandated dialogue that focuses on non-intrusive technical exchanges about best practices and other measures relating to security and safe operation of nuclear facilities would be most useful.

Let me end these remarks by addressing two critical issues of process that I know are of great interest to the Committee. The first concerns the Administration's proposal to treat the formal U.S.-Indian nuclear cooperation agreement as a conforming agreement that would come into effect so long as Congress did not pass a resolution of disapproval. Many critics of the U.S.-Indian nuclear cooperation agreement view this approach as an effort by the Administration to whittle down Congress' legitimate oversight authority under the Atomic Energy Act. I view this issue somewhat differently. I judge the Administration's proposal to treat the (yet to be concluded) U.S.-India nuclear

cooperation agreement as a conforming agreement as primarily a delicate balancing act aimed at satisfying difficult competing obligations towards three different, yet important, constituencies simultaneously:

Vis-à-vis India, the Administration seeks to give substantive meaning to the concept of “full nuclear cooperation” by communicating to New Delhi that its objective is to permanently shift India into the category of accepted countries with which the United States routinely conducts civil nuclear commerce—in effect, treating India in exactly the same way as it treats nuclear transactions with all its other preferred trading partners. In communicating this intention, the Administration seeks to convey that it is serious about eliminating all standing impediments to the transformation of U.S.-Indian relations, clearly the most important reason why the President and Prime Minister Singh contemplated resuming civil nuclear cooperation in the first place.

Vis-à-vis the international community (and in particular other nuclear suppliers), the Administration is seeking simultaneously to provide incentives to the NSG to act expeditiously in adopting a resolution that treats India as an exception to the current guidelines, while at the same time attempting to avoid a situation where U.S. nuclear industry might be commercially disadvantaged if the NSG were to permit the resumption of international nuclear trade with India before Congress mustered the time to affirmatively approve a U.S.-India nuclear cooperation agreement. In managing this delicate balance between orchestrating international support for the U.S.-Indian nuclear cooperating initiative and protecting American commercial interests, the Administration is seeking to minimize the uncertainty caused by the prospect of having two, possibly distant, votes on exactly the same subject, namely whether Congress effectively endorses the President’s policy of initiating full nuclear cooperation with India.

Vis-à-vis Congress itself, the Administration appears to be groping for a way to avoid disturbing Congressional prerogatives with respect to ratifying the President’s initiative with India, while still seeking the strongest possible expression of Congressional support which, it believes, is best manifested through advance legislative endorsement that supports the goal of full nuclear cooperation with India. In effect, the President’s current legislative proposal invites Congress to make *a clear and transparent strategic decision* on whether nuclear cooperation with India is in the long-term interests of the United States through appropriate amendments of the Atomic Energy Act. If by amending the Act as requested, Congress endorses the view that peaceful nuclear cooperation with India is in America’s national interests, then, the formal nuclear cooperation agreement (the so-called Section 123 agreement) becomes little other than a technical implementing instrument, which—by giving voice to the prior Congressional endorsement—can come into effect without any further action on the part of the Legislature. This approach, in my judgment, protects Congress’ privileges entirely since, should the leadership support it, Congress will continue to retain the prerogative of calling for a second, affirmative vote on any nuclear cooperation agreement that must eventually be concluded with India.

On balance, therefore, I think the Administration's current legislative proposal is appropriate to the unique circumstances represented by the challenge of resuming full nuclear cooperation with India. It protects Congressional equities in their entirety, yet affords the country a fighting chance of securing its other goals vis-à-vis both India and the international community, without in the process compromising American commercial interests.

The second issue pertaining to process that I would like to briefly comment on is whether the Administration's approach of seeking an India-specific amendment to Atomic Energy Act is inferior, as some have argued, to a criteria-based approach that in principle would permit cooperation with any country that meets certain specified desiderata. I am not convinced that a criteria-based approach is the optimal at this point in time for the following reasons:

First, there are only three countries—India, Pakistan, and Israel—that being outliers to the NPT would be susceptible to integration into the global non-proliferation order through a criteria-based approach. If there were a large universe of outliers, the benefits of a criteria-based approach would be more persuasive since it would enable the United States and the international community to make its judgments about the desirability of integration in a non-discriminatory way. The presence of just three outliers, however, each unique in different ways, with different needs and different histories, obviates the necessity for a criteria-based approach.

Second, of the three outliers identified above, only India currently merits the exceptional treatment proposed by the President. I arrive at this conclusion through the application of a “nested” test involving three sequential questions:

- (I) Which countries have not signed the nuclear Non-Proliferation Treaty and hence are candidates for integration into the global non-proliferation regime through exceptional means since their acquisition of nuclear weapons did not involve any violation of prior treaty commitments? *Only three countries meet this test: India, Pakistan, and Israel.*
- (II) Which countries, despite being non-signatories to the nuclear Non-Proliferation Treaty, have displayed a solid non-proliferation record in conformity with the Treaty's objectives? *Only two countries meet this test: India and Israel.*
- (III) Which countries, with exceptional nuclear non-proliferation records, have a dire need for nuclear energy to advance their economic and environmental goals? *Only one country meets this test: India.*

Since India is the only country that satisfies all these three tests, a principled case can be made for treating it currently as the only exception justifying the extraordinary treatment proposed by the President—a conclusion that does not require a generic criteria-based amendment for its implementation.

Third, adopting a criteria-based approach today unnecessarily broadens the universe of countries deserving of exceptional treatment when a country-based approach of the

kind proposed by the Administration achieves the same goal at lower cost to the international regime. Put a different way, adopting a country-specific approach presently does not prevent future Administrations from adopting a criteria-based approach in the future, if there is indeed a need to extend civil nuclear cooperation to others beyond India based on the exigencies of the day. Adopting a criteria-based approach now, however, signals a willingness in principle to broaden civil nuclear cooperation to other outliers so long as they meet certain conditions—despite the fact that it might be either inappropriate or unnecessary in any given case. This drawback of the criteria-based approach, however, can be avoided if the conditionality encoded in the legislation is drawn up carefully enough so as to apply only to India. If the conditionality is so specific however as to be transparently discriminatory, the entire effort risks degenerating into casuistry, in which case the benefits of a criteria-based approach, relative to a country-specific exception, are even more open to question.

On balance, therefore, I think the Administration's current proposal of seeking an India-specific exception to the Atomic Energy Act remains the best possible approach for advancing the goal of resuming full nuclear cooperation with New Delhi. It protects the option available to future Administrations to extend this privilege to other outliers such as Israel and Pakistan (should this become necessary), without binding future Presidents to such a course of action even if these countries were to meet the standards laid down in any criteria-based legislation in the future.

Thank you, Mr. Chairman, for your attention and consideration.